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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re A.A, a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

A.A.,

Defendant and Appellant.

F077963

(Super. Ct. No. JW135840-02)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Kern County. Louie L. Vega,
Judge.

Courtney M. Selan, under appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and
Catherine Tennant Nieto, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Peña, J. and DeSantos, J.

Minor A.A. contends on appeal (1) the juvenile court's finding that he committed grand theft from a person must be reversed because it is a lesser included offense of robbery, and (2) he is entitled to three more days of custody credits. The People concede, and we agree. Accordingly, we affirm in part and reverse in part, and remand this matter to the juvenile court to award three additional days of custody credits and prepare amended orders.

BACKGROUND

On May 6, 2018, minor and a group of other people approached the victim and "jumped" him. Minor and another person hit the victim's face, head, and back. Someone in the group took the victim's \$800 cell phone from his waist.

On June 7, 2018, the juvenile court found that minor had committed second degree robbery (§ 212.5, subd. (c); count 1), grand theft from a person (§ 487, subd. (c); count 2), and misdemeanor battery (§ 243, subd. (a); count 4).

On August 2, 2018, the juvenile court committed minor to the Kern County Crossroads Facility and imposed a maximum term of confinement of five years on count 1, plus two months for a violation of probation on a prior petition. The court stayed the terms on counts 2 and 4.

DISCUSSION

I. Lesser Included Offense

The parties agree that counts 1 and 2 were based on the same conduct of taking the victim's cell phone, and that grand theft from the person is a lesser included offense of robbery: "Theft in any degree is a lesser included offense to robbery, since all of its elements are included in robbery. The difference is that robbery includes the added element of force or fear." (*People v. Burns* (2009) 172 Cal.App.4th 1251, 1256; accord, *People v. Ortega* (1998) 19 Cal.4th 686, 694, overruled on other grounds in *People v. Reed* (2006) 38 Cal.4th 1224, 1228–1229.) Consequently, the parties agree the findings and orders on count 2 must be reversed. (See *People v. Sanchez* (2003) 113 Cal.App.4th

325, 333 [reaffirming the well-established rule that a defendant may not be convicted of both robbery and grand theft based upon the same conduct].)

II. Custody Credits

The parties also agree minor was entitled to three more days of predisposition custody credits.

DISPOSITION

The juvenile court's jurisdictional finding that minor committed grand theft from a person (Pen. Code, § 487, subd. (c); count 2) is reversed. The dispositional order is reversed and the matter remanded to the juvenile court. The court is directed to award minor three additional days of predisposition custody credits. The court is directed to prepare amended orders and forward certified copies to the appropriate entities. In all other respects, the juvenile court's findings and orders are affirmed.